



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/11416/2014
OA/11417/2014
OA/11418/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 6 May 2016

On 19 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

ENTRY CLEARANCE OFFICER (NAIROBI)

Appellant

and

M A A (1)

K A H (2)

K A H (3)

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Ms F Allen, counsel instructed by CNA Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Aujla.

Background

2. The respondents' applications under paragraph 297 of the Rules indicated that the first respondent was the minor son of the sponsor and the others her nieces.
3. On 14 August 2014, the ECO refused the said applications with reference to paragraphs 297(i)(a-d), 297(i)(e) and (f) of the Rules. In brief, the ECO did not accept the claimed relationships; that the sponsor was solely responsible for the first respondent or that she could adequately maintain and accommodate three additional children. With regard to Article 8, it was said that the sponsor chose to settle in the United Kingdom without the respondents.
4. In appealing, the respondents' stressed that they were destitute in Kenya and without a carer since the death of their grandmother in 2013.
5. An Entry Clearance Manager (ECM) reviewed the decision to refuse entry, however the decision was maintained on all grounds.
6. At the hearing before the judge on 21 September 2015, counsel for the respondents conceded that the Rules were not met and the appeal was limited to Article 8 issues alone. The sponsor was the only witness and the judge wholly accepted her evidence, which was supported by DNA evidence of the claimed relationships. The appeals were allowed on Article 8 grounds on the basis that their circumstances were exceptional and compelling.

Error of law

7. The grounds of application argue that the judge materially erred in failing to have regard to or the public interest under section 117B of the 2002 Act; failed to apply those considerations; failed to follow the test in Razgar [2004] UKHL 27 or to consider proportionality. Permission was granted on all grounds.
8. At the hearing before me, Mr Bramble indicated he was relying on the grounds of appeal as it was apparent that the judge had not dealt with the s117B public interest matters, however if that submission was accepted, he told me that he was happy for a fresh decision to be substituted to the same effect, just dealing with that aspect. He confirmed that the Secretary of State did not dispute the factual matrix of these appeals. He left it to me to decide if the judge made a material error of law or not.
9. Ms Allen briefly argued that the judge's error was immaterial.

10. At the end of the hearing, I announced that the judge made no material error of law and that his decision is upheld. My reasons are as follows.
11. The judge did not make any reference to section 117B of the 2002 Act. As the respondents are seeking entry clearance, the only relevant parts would be sub-sections (2) and (3), dealing with the matters of English language and financial independence. In view of the fact that the respondents were minors at the date of the decision, I have no hesitation in accepting Ms Allen's submission, that had the judge considered these provisions, it would have had no material impact on the decision he reached. Given that the factual matrix of the appeals is unchallenged, I conclude that while the judge erred, this was not a material error.
12. I maintain the anonymity direction made by the First-tier Tribunal in the following terms:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of Judge Aujla is upheld.

Signed:

Date: 13 May 2016

Deputy Upper Tribunal Judge Kamara